

The logo for Banner Health Systems, featuring a stylized crosshair design with blue, red, and yellow squares and a black crosshair.

Banner Health Systems

Licensure complaints: Sources, types, process and outcomes

Valerie Smith, RN, MS, Associate Director
Arizona State Board of Nursing
April 13, 2005



Complaints

- Sources -
 - Application process
 - Employer/manager/co-worker
 - Self-report
 - Consumers, family ...
 - Law enforcement
 - Health care providers
 - Other healthcare regulatory agency
 - Other



Application

- Are you currently under investigation or is a disciplinary action pending against your nursing license or CNA certificate in any state or territory of the United States? If yes, provide
- Are you currently a participant in as state board/designee monitoring program ? If yes, provide ...



Application

- Have you ever been terminated from an alternative to discipline, diversion or a peer assistance program ...? If yes, provide ...
- Have you ever been convicted, entered a plea of guilty, nolo contendere or no contest, or have you ever been sentenced, served time in jail or prison, or had prosecution deferred or or sentence deferred or probation deferred in any felony or undesignated offense? If yes, provide



Application

ARS §32-1606 (B). The Board Shall:

- 15. Require each applicant for initial licensure to submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.



Powers and duties of the Board

ARS §32-1606 (B). The Board Shall:

- 17. Revoke a license of a person, revoke the multistate licensure privilege of a person pursuant to section 32-1669 or not issue a license or renewal to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions five or more years before the date of filing an application pursuant to this chapter.



§32-1601. (1) Definitions

- “Absolute discharge from the sentence” means completion of any sentence including imprisonment, probation, parole, community supervision or any form of court supervision.



Sources: Criminal history complaints

- Initial applicant certification or licensure
- Renewal application
- Self-report pursuant to ARS §32-1601 (16) (I) which requires a licensee or certificate holder to self-report a conviction for a felony or undesignated offense within ten days after the conviction.
- Self-report pursuant to ARS §32-3208: Requires licensees and applicants to report misdemeanor criminal charges which may affect patient safety and all felony charges within 10 days
- Law enforcement or courts
- Other



Examples: Criminal findings of concern

- Felony convictions
- Recent or pattern of misdemeanors
 - Theft, fraud and deceit
 - Assault
 - Drug or alcohol related
 - Abuse or exploitation of a vulnerable person
 - Sexual misconduct

Examples: Common practice related complaints

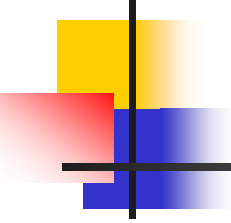


- Failure to adhere to minimum standards of practice
- Failure to rescue or intervene
- Unsafe practice
- Documentation errors
- False documentation
- Medication or treatment errors
- Inadequate performance of procedures
- Exceeding scope of practice
- Practicing without a license



Examples: Common substance abuse related complaints

- Failed pre-employment drug screen
- Failed *for cause* drug screen
- Refusal to submit to a *for cause* drug screen
- Odor of alcohol on duty
- Indicators of impairment
- Drug diversion
- Prescription “shopping”
- Prescription fraud
- Drug or alcohol related arrest/conviction
- Drug or alcohol medical event (OD)



Examples other common allegations (complaints)

- Theft
- Abuse
- Exploitation
- Boundary violations
- Practicing nursing without a valid or authorizing license (imposter)



Complaint processing

- Complaint triaged for risk/harm level
 - Substance related referred to CANDO for initial eligibility review
- Investigative phase
- Investigative report and outcome determination by Board



Elements of an investigation

- Triage
 - Allegations within ASBN jurisdiction?
 - Potential violations?
 - Risk of harm? Initial risk level level assigned.
 - Other initial information needed? Issue initial subpoenas.
 - Assignment to investigator
 - Notify and request written response from Respondent
 - Notify complainant and provide contact information



Elements of an investigation

- Investigator review of relevant records
 - Initial complaint and allegations
 - Application/licensure history
 - Respondent's response
 - Employment/education history
 - Legal history – arrest and conviction records
 - Patient medical records- narcotic dispensing, MARs
 - Respondent's medical records, pharmacy profiles



What about HIPPA?

- The Board, as a health oversight agency, is authorized by law to use its subpoena power to obtain medical records and other information.
- HIPPA statutes are not intended to prevent a regulatory agency from obtaining and reviewing records necessary to assure the safe practice of the regulated person.



Elements of an investigation

- Complainant interview
- Respondent interview
- Witness interviews
- Evaluations/expert consultation
- Respondent and investigator review of investigative findings.



Elements of an investigation

- Review of NPA –A violation of statutes or rules?
- Risk to the patient?
- How to remediate?
 - Isolated vs. pattern
 - Knowledge
 - Conduct
 - Intentional or accidental
 - Illness, treated or untreated
 - Accountability
 - Other



Elements of an investigation

- Investigative report prepared
- Peer, AAG and management review
- Placed on board agenda
 - Notice to respondent
 - Notice to complainant
 - Right to appear and be heard
- Board decision
 - Notice to respondent
 - Notice to complainant



Possible Board actions

- Non-disciplinary
 - Dismiss
 - Letter of Concern
 - Administrative Penalty



Possible Board actions

- Disciplinary
 - Denial of license
 - Civil Penalty
 - Decree of Censure (letter of reprimand)
 - Probation (chemical dependency/practice)
 - Suspension (may be a summary suspension if imminent harm)
 - Voluntary Surrender
 - Revocation



When is discipline effective?

- Licensee consents

or

- Administrative hearing and appeal rights have been exhausted



CANDO

C

Chemically

A

Addicted

N

Nurses

D

Diversion

O

Option



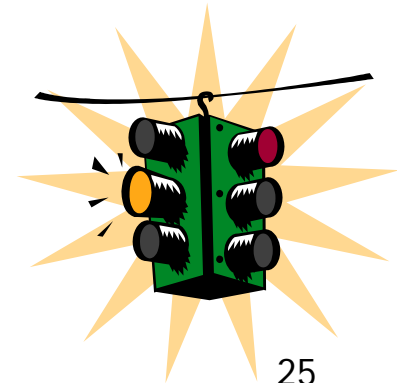
Addiction

- A complex lifelong biopsychosocial disease with physical, cognitive, emotional, financial, and legal consequences.
 - Illness can be described
 - Course is predictable and progressive
 - Disease is primary, not *just* a symptom
 - Terminal if left untreated and may result in severe cognitive impairment



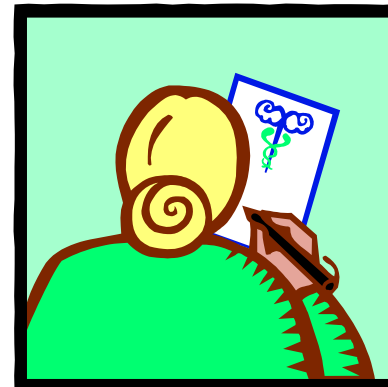
Signs and symptoms

- Loss of control
- Continued use despite high potential for negative consequences
- Changes in tolerance
- Compulsion to use and obsessive thinking about drugs/alcohol
- Chaos



Addiction is a disease

Although individuals may choose to use and/or abuse a drug, addiction is not a choice.



Identification of the addicted nurse

- Changes in time and attendance
- Changes in interpersonal/intra-personal relationships
- Changes and declining work performance





Time and attendance

- Excessive use of sick time, especially after days off, holidays
- Absence without notice or last minute requests for time off – unusual explanations
- Excessive work hours
- Long breaks or lunch hours
- Frequent or unexplained disappearances from the unit



Interpersonal/intrapersonal

- Personality changes
- Emotionally labile, mood swings
- Unpredictable, impulsive behavior
- Inappropriate verbal or emotional responses i.e. crying, snapping at peers, uncontrolled anger
- Diminished alertness, dozing off, confusion, frequent memory lapses



Interpersonal/intrapersonal

- Isolates from co-workers
- Suspiciousness, secretiveness, lying
- Violation of personal values
- Neglect of commitments & obligations
- Elaborate implausible excuses for behavior



Physical indicators

- Shakiness
- Hand tremors
- Slurred speech
- Constricted pupils
- Diaphoresis
- Unsteady gait
- Runny nose
- Odor of alcohol



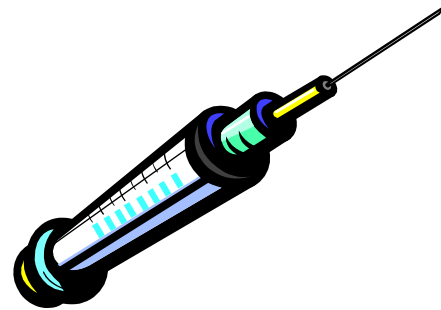
Job performance

- Difficulty meeting schedules or deadlines
- Sloppy or illogical charting
- Medication errors/poor judgment
- Errors in cognition, difficulty with organization, prioritizing competing demands

Declining job performance is often late in the disease

Drug diversion

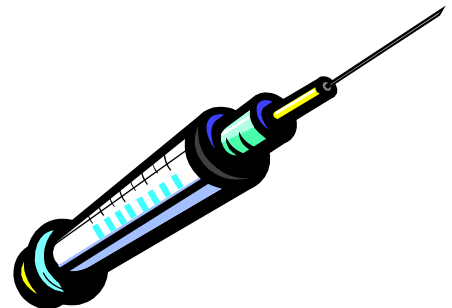
- Symptomatic of the compulsion to use, loss of control, and continued use despite negative consequences
- Involves compulsive and impulsive thinking
- Not uncommon





Indicators of drug diversion

- Incorrect narcotic counts and/or altered counts
- High volume of narcotic removals
- Seeks additional narcotic orders/supply
- Signs-outs for patients without orders or who have been discharged
- Signs-out to fictitious patients





More indicators

- Signs-out under coworkers password
- Inconsistencies between patient's report of pain and medication signed out
- Missing narcotics, controlled medication records
- Evidence of tampering





And more indicators

- Frequently volunteers to be the medication nurse
- Selects patient assignments that provide access
- Higher incidence of reporting medication waste or failing to account for waste
- Failure to obtain co-signatures
- Failure to adhere to established P&P



Intervention

- Timely
- Reasonable concern/cause
- Include objective data
- Maintain confidentiality
- Assure safety of patients and nurse (employee) safety
- Goal = further evaluation and/or treatment



CANDO Stipulated Agreement

- Voluntary, confidential, non-disciplinary
- Must meet eligibility requirements including voluntarily entering prior to investigation
- Three years
- Treatment and Aftercare
- AA, NA, CA, and sponsor relationship
- Peer support group
- Abstain drugs/alcohol
- Random drug screening





CANDO Agreement cont.

- Work restrictions and performance evaluations (settings, hours, controlled drug access, supervision)
- Nursing employer involvement
- Medical provider involvement
- Similar terms to disciplinary order



CANDO

- Voluntary – prior to an investigation
- Non-discipline
- Confidential
- Treatment
- AA, NA, CA, NRG
- Abstain
- UDS
- Practice restrictions

CD Probation

- Board outcome of investigation
- Discipline
- Public record
- Treatment
- AA, NA, CA, NRG
- Abstain
- UDS
- Practice restriction



CANDO and CD probation work related terms

- Notification of practice setting
- Performance reports from immediate supervisor
- Level of supervision defined in document
- Controlled drug restrictions
- Acceptable work hours
- Acceptable work locations/settings



Notification of practice setting

- Nurse must provide a complete copy of the Agreement/Order to nursing employer
- Must provide at or before date of hire for future settings
- Must cause the employer to submit letter in writing acknowledging receipt
- Must notify ASBN if any changes in nursing employment



Supervisor performance reports

- If unsatisfactory-explain why.
- If significant practice or conduct issues, don't wait until next report is due. Contact ASBN.



Levels of supervision

- On-site – A RN, in good standing who has read the agreement/order and on duty in the facility
- Direct - A RN, in good standing who has read the agreement/order and is working on the same unit
- Preceptor – A RN, in good standing who has read the agreement/order and is physically present when any nursing care or duties are being performed by Respondent. More commonly used for significant practice related deficits.



Controlled drug restrictions

- 6-12 months. Written approval on ASBN letterhead to resume access
- Includes other potentially addictive substances



Acceptable work hours

- Maximum number/week identified in the Agreement/Order
- Restricted from working within 12 hours of previous shift
- Night shift often restricted
- 12 hour shifts maximum
 - No more than 3 consecutive shifts



Practice settings

- Prohibited settings/positions
 - Registry
 - Home health
 - Traveling nurse assignments
 - Temporary agencies
 - Float pool
 - On-call



Modifications to Agreement/Order

- “But the Board said I could ”
 - Must be in writing from CANDO or Board



Suggestions for nurse administrators

- Manager and staff education
- Timely report AODA concerns to ASBN
- Encourage self-report to CANDO
- Report all positive (failed) drug screens to ASBN, including pre-employment



More suggestions...

- Education and recognition of professional impairment
- Establish policies and processes for investigating suspected impairment or diversion
- Establish policies for the re-entry of the recovering nurse



Questions??

- Contact ASBN:
602-889-5150
<http://www.azbn.gov>
- Contact CANDO
602-889-5156
- Contact Val Smith
602-889-5206
vsmith@azbn.gov